

STATE OF MAINE  
HANCOCK, ss

UNIFIED CRIMINAL DOCKET  
Ellsworth  
Docket # HANNCD-CR-2022-00241

STATE OF MAINE

v.

ELIOT CUTLER  
D/O/B 07/29/1946  
523 Naskeag Road  
Brooklin, ME 04616

PLEA AGREEMENT & SENTENCING  
MEMORANDUM

**I. PLEA AGREEMENT**

The State of Maine and Defendant have agreed to the following Plea Agreement:

**Grand Jury Waiver:** Defendant shall waive Grand Jury and proceed on the existing complaint.<sup>1</sup>

**Plea Terms:** Defendant shall plea to all 4 Counts in the pending Complaint.

**Agreed Sentence:** 4 years incarceration with all but 9 months suspended, concurrent on each count

**Probation:** 6 years of probation consistent with 17-A M. R.S. Sec. 1804 (2)(C)

**Standard probation conditions, and Special Conditions of Probation, as follows:**

\* Not to possess “sexually explicit materials” as defined by Title 17-A (*see e.g. Section 258 (2)*), whether originating or generated on or off the internet, which depict minor children under age 18

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<sup>1</sup> Defendant’s counsel orally indicated to the Court that Defendant would waive Grand Jury & Indictment, and Proceed by way of the pending Complaint alleging four Counts of Possession Sexually Explicit Materials, 17-A M.R.S. Sec. 284 (1)(C), Class C. The State advised Defendant and the Court at conference of the following caveat:

Additional Potential Count: In the event Defendant elected not to continue with this agreement then the State would add an additional single Count of Dissemination of Sexually Explicit Materials, Class B, 17-A M.R.S. Sec. 283 (2) (*based on number of images forming a permissible inference*).

\* Not to possess any “photographs” as defined by Title 17-A M.R.S. Sec. 281 (3), or any other image or video material depicting “sexually explicit materials” or “sexually explicit conduct” of or with minors as defined by 17-A M.R.S. Sec. 281 (3) & (4), or which depict unclothed minor children whether or not engaged in sexually explicit conduct

\* Not to connect to the internet with any electronic or digital device of any kind or nature, including, but not limited to, computers, cellular phones, routers, servers, modems or other devices unless each such device is actively monitored by RANCTC (*or substitute monitoring company approved by Probation & Parole*) for possession, dissemination, downloading, viewing and/or uploading of sexually explicit materials and/or sexually explicit conduct as defined by Title 17-A, or other content depicting unclothed children under 18 years of age, with such monitoring costs paid for by Mr. Cutler, and proof of such monitoring provided to Probation & Parole; and further, RANCTC (*or its approved substitute*) shall generate and deliver monitoring reports to Probation & Parole upon demand, with costs of such reports satisfied by Mr. Cutler

\* Defendant shall disclose to Probation & Parole any passwords or keys used to access electronic devices in his possession, control or registered to him, and disclose to Probation & Parole any passwords or keys used to access the internet or any online accounts, routers, modems, wireless services and/or servers of any type or nature

\* Defendant shall be subject to random searches by Probation and Parole of any computer, cellular phones, servers or other electronic devices in Mr. Cutler’s possession or control, or identified on any account owned or used by him, for the presence or history of sexually explicit materials or sexually explicit conduct involving minor children as may be defined under Title 17-A, stored images or photographs (*as defined by Title 17-A M.R.S. Sec. 281*) of sexually explicit materials or sexually explicit conduct as may be defined under Title 17-A involving minor children, or any images or materials which could be construed to constitute sexual exploitation of a minor

\* Subject to random searches of any home, business, place or vehicle belonging to Mr. Cutler, for sexually explicit materials or images of sexually explicit conduct involving minor children, regardless of the manner in which those images are stored, including, but not limited to, email accounts, email messages, text messages, instant messaging, social media accounts, electronic devices, discs, thumb drives and/or other storage devices of any kind or nature

\* Defendant shall not maintain any encrypted files upon or within his computer or accounts without the express written authorization of Probation & Parole

\* Defendant shall not visit any internet websites known to depict minor children engaged in sexual acts or sexually explicit conduct, or which depicts sexually explicit materials involving children

\* Defendant shall immediately notify Probation & Parole if he inadvertently accesses sexually explicit materials or images of sexually explicit conduct involving minor children under 18 years of age during internet sessions

\* Continued counseling as recommended by existing treatment providers (Dr. Tennes & Paradise Creek Recovery Center) to the satisfaction of Probation & Parole

\* Sign all necessary releases for Probation & Parole to communicate with Dr. Tennes, Paradise Creek Recovery Center and all other mental health treatment providers giving services to Mr. Cutler

\* Pay all fines, assessments, fees and donations associated with this agreement

\* Registration under the Sexual Offender Registration and Notification Act, 34 M.R.S. Sec. 11201 et. seq., as amended (ten-year registration)

**Supervision Fee:** \$25.00 per month consistent with 17-A M.R.S. Sec. 1807 (6)

**Donation:** \$5,000.00 donation to the Center for Missing & Exploited Children payable within 30 days of plea with this condition being attached to Count 1, said condition also being a condition of probation.

**Forfeiture:** Defendant has agreed to forfeit all of the computers, electronic devices and flash drives seized by law enforcement.<sup>2</sup>

## II. RULE 11 FACTUAL BASIS

On December 15, 2021, the National Center for Missing and Exploited Children (NCMEC) received CyberTip report 110723957 from Dropbox Inc., as required by 18 U.S.C.A. § 2258A.

NCMEC is a nonprofit organization that provides services to families and professionals that relate to the abduction and sexual exploitation of children. NCMEC also

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<sup>2</sup> The Computer Crime Lab indicated it would be very time-consuming and difficult to ensure the devices no longer contained contraband given the volume of materials. It is understandable that Defendant would not want to risk having any inadvertent contraband remaining on those devices upon their return.

operates the CyberTipline and the Child Victim Identification Programs to assist law enforcement officers and others in identifying and rescuing victims of child exploitation and child pornography. As part of the NCMEC directives, NCMEC works with electronic service providers (ESP) and remote computing service providers, such as Facebook, to reduce the dissemination of child pornography images and or videos on the internet. When an ESP becomes aware of suspected child pornography images and/or videos, the ESP representative may view the images and/or videos in question to determine if the images and/or videos is child pornography and thus a violation of the ESP use agreement with the user(s). If the image and or video is deemed by the ESP representative to be child pornography, the ESP will file an electronic report with the NCMEC. The reporting ESP will provide a NCMEC report with samples of the child pornography images and/or videos, IP addresses captured at the date and time of the child pornography file being uploaded by the user, and any registration information (*if available*). NCMEC will then research more publicly available information based on the information provided to them by the ESP to determine, if possible, the identification and or geographic location of the user uploading the child pornography images and or videos in order to forward the report to the appropriate jurisdiction. NCMEC will then forward their report to the Regional Internet Crimes Against Children (ICAC) commander for further investigation. The Maine Computer Crimes Unit is the regional ICAC for Maine.

In this case, Dropbox Inc. captured Internet Protocol (IP) address 72.95.94.150 on 12-01-2021 at 15:42:29 hours UTC as logging into the account that uploaded 1 file of sexually explicit material. The reported file has been reviewed by the ESP. Dropbox also captured the name Eliot Cutler and the e-mail address [eliot.cutler@gmail.com](mailto:eliot.cutler@gmail.com).

On 1-5-2022, the Maine State Police Computer Crimes Unit (CCU) received a CyberTip from the NCMEC. NCMEC CyberTipline Report Number 110723957 was submitted by Electronic Service Provider (ESP) Dropbox in accordance to federal law, 18 U.S.C.A. § 2258A.

On 1-6-2022, CCU Evidence Specialist Nicole Denis began an investigation into this Cybertip. Denis reviewed the reported file and viewed what appeared to be child pornography. The reported video appeared to be an adult male having sexual intercourse with a prepubescent female, approximately 4-6 years of age.

On 1-6-2022, Denis ran the reported IP address in this NCMEC referral, 72.95.94.150, through an open source IP address GeoLocator called MaxMind ([www.maxmind.com](http://www.maxmind.com)), which listed an approximate location of Penobscot, Maine, and Internet Service Provider (ISP) being Consolidated Communications. Denis submitted one subpoena request to Assistant Attorney General (AAG) Paul Rucha for one of the reported IP addresses used to log into this Dropbox account:

IP: 72.95.94.150  
ISP: Consolidated Communications  
Location: Penobscot, Maine  
Incident date/time: 12-01-2021 at 15:42:29 hours UTC

On January 14, 2022, Consolidated Communications responded and indicated that IP 72.95.94.150 on 12-01-2021 at 15:42:29 hours UTC came back to Eliot Cutler with a service address of 523 Naskeag Rd, Brooklin, Maine. They also included a phone number of 207-671-2010.

On January 24, 2022, by logging onto TLOxp which is a commercially available, subscription-based database service offering access to law enforcement officers in the course

of their duties, Denis was able to search the information provided on the subpoena return. Denis searched for an ELIOT CUTLER which produced one (1) result for an Eliot Cutler, DOB 07-29-1946, residing at 1172 SHORE RD. CAPE ELIZABETH, ME 04107, which is inconsistent with the subpoena results. However Cutler was also listed with another known address of 523 NASKEAG RD. BROOKLIN, ME 04616, which is consistent with the subpoena results.

On 1-25-22, Special Agent Glenn Lang of Maine Computer Crimes Unit (*hereinafter Lang*) began his investigation into this case. He reviewed and confirmed Denis's work. He reviewed the video file that was sent by Dropbox. Lang reported that the video appears to be an adult male having sexual intercourse with a prepubescent female, approximately 4-6 years of age. Lang took a still-shot image from the video and attached it to his Affidavit for Search Warrant, identified as "Attachment A".

Lang researched Eliot Cutler through the Bureau of Motor Vehicles, which showed he is using 1172 Shore Rd. Cape Elizabeth, Maine as a registered address on his Maine Driver's License.

On 1-31-21 Lang drafted an application for a search warrant for the contents of the suspect Dropbox account. The warrant was signed by Justice Walker. Lang emailed a copy of the search warrant to Dropbox Inc.

On 2-14-22 Lang received a reply from Dropbox legal compliance with a number of files and folders that were the contents of the subject account. There was some difficulty actually downloading the material from Dropbox due to its size, approximately (447GB). After several attempts to download this data Lang went to the CCU office in Vassalboro and

Forensic Analyst Stacy Francoeur was able to download the file. She also uncompressed the data which took several hours.

On 2-18-22 Lang collected the drive with the data from F/A Francoeur and started examining the items sent by Dropbox. Lang located the file that was reported to NCMEC and was the basis for the Dropbox search warrant. Lang found a number of adult pornography videos, but no other child pornography. Another item Dropbox sent was a file named file-activity.csv. This appeared to be an activity log for the account. Lang located 867 items of interest, the first being the upload of the child pornography file originally detected from the log: "2021-12-15 04:38:37 utc 21737142 added 14672547/root/wine/wine/wine/cellar tracker/94sp/video\_2017-07-07\_17-20-19.mp4". The next 866 items were related to entries from the log such as: "2019-04-07 14:49:42 utc 21737142 added 86460 /root/aumbtrjxebypx7cal/s/athena lynn esterman/photos/nudes/dimples4654\_148099779064". Some of these files were pictures and some were videos. Some had "Nude" in the title while others had "Non Nude"

On 3-17-22 Sgt. Jessica Shorey of the CCU drove past Defendant's residence in Cape Elizabeth and noted there were 2 vehicles parked at the residence. One was a 2012 Cadillac with a Maine Conservation registration plate of 1753M registered to Mr. Cutler and the other car, a red 2002 BMW with a Maine Registration Plate 3391NB, was registered to Melanie Cutler.

On 3-22-22 Lang obtained search warrants for the Cutler's homes in Portland and Brooklin.

On 3-23-22 the search warrants were executed simultaneously. Lang was assigned to the Brooklin warrant as Sgt. Pickering spotted Eliot Cutler's Cadillac parked at

the Brooklin home the night of March 22. State Police troopers and detectives arrived at the Cutler residence in Brooklin at 0732 hours. This group included State Police Detective Chris Cookson, Sgt. Tom Pickering, Special Agent Jason Bosco, Sgt. Scott Bryant, Det. Taylor Bagley, Detective Jake Ferland, Forensic Analysts Victoria Brennan and Stacy Francoeur, as well as Homeland Security Officer Chase Ossinger and Officer Amie Torrey of the Bar Harbor Police Dept. Torrey is one of the CCU affiliates and assists with cases in this area.

When officers arrived Lang went to the front door and knocked for several minutes without getting any response. Mr. Cutler's vehicle was still parked at the home. After several minutes SA Lang entered the home through the unlocked front door and announced "*State Police*" and started trying to locate anyone currently at the house. Lang continued to announce "*State Police*" and "*State Police Search warrant.*" Lang made his way upstairs and then heard one of the officers talking to someone on the first floor. He went back to the first floor and met with Mr. Cutler and his wife who had been located. Mrs. Cutler was in bed under blankets with her foot elevated as she recently had surgery. Lang asked Mr. Cutler to come out to the kitchen where he explained that officers had a search warrant and would like his cooperation regarding a child pornography investigation. Mr. Cutler said he needed to call his lawyer. SA Lang told him he and his wife were free to leave while officers processed the house.

Mr. Cutler then said he needed to talk to his wife and Lang accompanied him because that area of the house had not yet been searched and he could not be allowed free private access out of concern for potential weapons or evidence being located in that area. Mr. Cutler told his wife that the search warrant was for child pornography and officers "*would probably find some on one of his computers.*" This statement was recorded. There



was a bathroom attached to the room where Mrs. Cutler was recuperating and officers located Mr. Cutler's cell phone in that location.

Mr. Cutler returned to the kitchen table where he waited for officers to search the property. Most of the time that Mr. Cutler was sitting at the table was recorded by law enforcement.

There were dozens of devices located during the search that were capable of storing digital evidence. Officers tried to focus on what they believed to be Mr. Cutler's property rather than belonging to his wife. On the second floor of the home there was a bedroom with a large bed and very few other items in it. There was a CPAP machine and a number of pieces of media such as flash cards, USB drives and external hard drives. It appeared that this was where Mr. Cutler was sleeping.

The CCU's forensic van was on site to preview some of the media officers were collecting from the home. Computer Crime Lab forensic analysts, Victoria Brennan and Stacy Francoeur, immediately began reviewing the materials that had been seized. F/A Brennan located a very large number of child pornography videos on the flash cards that were taken from the second floor bedroom near the CPAP machine. She displayed a couple of the videos for Special Agent Lang and they were of young girls in the 4-year-old range being sexually exploited.

Mr. Cutler asked if officers could leave his cell phone and he was told that was not possible. Mr. Cutler said that he desperately needed a Quicken file for his banking that was stored on his computer and a thumb drive. Forensic Analyst Brennan checked the thumb drive for contraband, and as the only item located on it was a Quicken file that thumb drive was returned to Mr. Cutler.

**From Report of Troop Investigator Jake Ferland:**

On 3/23/22 when we executed the search warrant at Eliot Cutler's house in Brooklin, after we made initial entry and we were still clearing the residence, I asked Eliot if there was anyone else in the house because there was someone sleeping upstairs and there was a sleep apnea machine. He told me that he was the one sleeping upstairs. While I was sitting with him in his kitchen, he told me he could make the search much quicker for us by showing us where things are but he should really wait to talk to his lawyer. He had already talked to someone on the phone while trying to get in touch with his attorney and told them this search warrant was for "child porn." I didn't respond to him. While Det. Bagley was searching the kitchen, he again stated that we didn't need to search there because there was nothing in the kitchen.

**From Report of Officer Amie Torrie of the Bar Harbor Police Dept.**

On 3/23/22 I, Officer Amie Torrey of the Bar Harbor Police Department, assisted S/A Glenn Lang and other MCCU officers with executing a search warrant at 523 Naskeag Rd in Brooklin Maine belonging to Mr. Eliot Cutler. Part of my duties was to stay in the kitchen with Mr. Cutler until the search of the residence was completed. At one point Mr. Culter had requested his phone back and he was advised by S/A Lang that he wasn't sure he would be able to get that to him today. S/A Lang went into the back office of the house and I stayed with Mr. Cutler in the kitchen. I was standing at the kitchen island and Mr. Cutler was sitting in at the kitchen table. Mr. Cutler asked again about getting his phone back. Without any questions or comments made to Mr. Cutler by me he stated to me that whatever we were looking for we weren't going to find on his phone. He stated that he needed his phone back. I

advised S/A Lang that Mr. Cutler was asking about his phone again. We were onsite until just about noon.

### **Special Agent Glenn Lang**

On 3-24-22, I spoke to F/A Brennan who was examining some of the media seized at our lab in Vassalboro. She indicated that the compact flash cards had literally thousands of videos of very young children being sexually abused. She provided me with some of the titles of these files and stated the titles quite accurately described the content of the videos. A few of the titles of files located on the cards is shown on **Exhibit 1** (*Note: In the world of child sexual exploitation "PTHC" means Pre Teen Hard Core*).

On April 18, 2023, in preparation for Defendant's Rule 11 and sentencing, Special Agent Glenn Lang provided the District Attorney's Office with a Memorandum outlining the total number of files found on Defendant's devices and the percentage of those containing child pornography with children under age 12. S/A Lang also provided the District Attorney's Office with head and shoulder photographs of the child victims depicted in some of the pornographic material on Defendant's devices.<sup>3</sup> **See Exhibit 2.** Of the 142,000 images and videos provided for review, random sampling revealed 59% of the files or 83,780 of the files, contained child pornography where the children were under age 12. The downloads occurred between 2014 and 2021.

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<sup>3</sup> S/A Lang's Memorandum was immediately provided to Defendant's counsel upon receipt on 4/26/2023.

### III. BASIS FOR STATE'S PROPOSED SENTENCE

On arriving at its proposed plea agreement, the State analyzed the case facts consistent with 17-A M.R.S.A. Section 1602.<sup>4</sup> *See also State v. Hewey*, 622 A.2D 1151 (1993). The State determined that the basic term of imprisonment for the charged conduct falls within the 2 ½ to 3 ½ year imprisonment range out of the maximum penalty of 5 years for the alleged conduct. In consideration of the aggravating and mitigating factors associated with the case, the State ascertained that the maximum term of imprisonment is four years incarceration. The State further calculated that a portion of the maximum sentence should be suspended consistent with the State's statutory sentencing scheme, *Hewey* analysis and similarly-situated cases.

#### ***Aggravating Factors:***

The Aggravating factors the State considered in this case included:

1. **Volume of Materials & Duration of Conduct:** Defendant's devices contained over 80,000 images and videos of children under age 12 engaged in sexual acts based on random

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<sup>4</sup> Section 1602 states:

**1. Class A, Class B or Class C crimes.** In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

A. First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual. [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest. [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.

sampling of 142,000 files on Defendant's device. Only 3 videos randomly selected were of child pornography of children between the ages of 12 and 16 years of age. It took the Maine Computer Crime Lab hours to download the volume of material. The trove of images was described by investigators at the Computer Crime Lab as being evidence of "a hoarder" which revealed long-term conduct in collecting the vast amount of contraband. Special Agent Lang indicated that he viewed files that were created as early as November 2014. *See Exhibit 2.*

2. **Egregious Nature of the Video Evidence:** The videos and images depicted middle-aged adult men engaged in penile penetration of prepubescent female children as young as 4 to 6 years of age with such men ejaculating into their vaginas. In one representative video, a female child victim in the apparent four to six-year-old age range appeared to be physically held down with their legs spread apart while another adult male placed his penis into the girl's vagina. The girl's facial expression was one of sheer horror. Videos also depicted four to six year-age-range girls performing oral sex on adult men, and stroking adult male penises until ejaculation. Other videos showed young children being penetrated with sex toys. Trying to describe these videos in this Sentencing Memorandum completely sanitizes the acts. The State requests that the Court examine two or three representative videos in State's possession so that it can appreciate the sentence requested by the State. S/A Lang plans to be present for the Rule 11 and can assist with this undertaking. These videos depict the brutal and savage rape of four to six-year-old girls. To possess these videos and images for purposes of sexual gratification is to be complicit in the acts perpetrated against these children. Possessing this material creates the market for these types of violent crimes against helpless children. *See Paroline v. United States*, 572 U.S. 434, 439-40 (2014) ("*the demand for child pornography harms children in part because it drives production, which involves child abuse*").

3. **Number of Potential Counts:** The State charged four counts of Possession of Sexually Explicit materials, Class C, based on representative videos turned over to the District Attorney's Office by the Maine Computer Crimes Unit. However, the volume of evidence existing on Defendant's devices could have supported many more criminal counts (*one count per file download*). The State could have also brought charges of Dissemination of Sexually Explicit Materials, Class B, in violation of 17-A M.R.S. Sec. 283 (2) based on a permissible inference of dissemination arising from the sheer number of downloaded contraband files and images.<sup>5</sup> Obviously, the proposed punishment could be far more severe had the State pursued Class B counts.<sup>6</sup> The State agreed to forego such additional counts provided Defendant accepted this proposal prior to presentation of the case to Grand Jury. As the State considered that any additional Class C counts would likely have resulted in concurrent sentences, additional counts in the complaint would not have served any particular useful purpose where the mere existence of these files could still be considered as an aggravating factor for sentencing purposes.

4. **Recognized Harms to Children Arising from Possession of Child Pornography:**

Mere possession of child pornography has been recognized as a very serious offense. *See United States v. Church*, 701 F.Supp. 2d 814, 820-822 (W.D. Va, 2010) (*discussing three specific harms to children from possession of child pornography: 1) emotional harm from knowing their images exist and are being shared; 2) a violation of the child's right to privacy, and 3) creating an economic incentive to produce child pornography and thereby victimize children*). Possession of child pornography creates an incentive to sexually abuse children. *See*

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<sup>5</sup> In its limited examination of Defendant's devices, the Computer Crime Lab did not uncover direct evidence of dissemination. Upon notification of this plea agreement, the Computer Crime Lab was told it could stop reviewing the devices given the pending backlog at the CCU.

<sup>6</sup> The maximum term of imprisonment for a Class B crime is 10 years. *See* 17-A M.R.S. Sec. 1604 (1)(B).

*Paroline v. United States*, 572 U.S. 434, 439-40 (2014) (“the demand for child pornography harms children in part because it drives production, which involves child abuse”). The “mass distribution system for child pornography” is now driven by technology. As the Court noted in *United States v. Reingold*, 731 F.3d 204, 226 (2d Cir. 2013) (citation omitted), “[i]f anything, the noted digital revolution may actually aggravate child pornography crimes insofar as an expanding market for child pornography fuels greater demand for perverse sexual depictions of children, making it more difficult for authorities to prevent their sexual exploitation and abuse.” *Id.* @ 217.

***Mitigating Factors:***

1. Defendant voluntarily completed psychological evaluations, attended residential treatment and engaged in significant counselling after the State brought charges forward;
2. Defendant has no known criminal record;
3. Defendant accepted responsibility for his conduct by virtue of his plea;
4. Defendant has a record of public service; and
5. The stigma of convictions for these crimes will weigh heavily on Defendant.

**IV. COMPARATIVE CASE SENTENCES INVOLVING POSSESSION OF SEXUALLY EXPLICIT MATERIALS OF CHILDREN UNDER AGE 12**

The State consulted with every Prosecutorial District in the State of Maine, the Maine Computer Crimes Lab and the United States Attorney’s Office for the District of Maine with

regard to sentences handed down in similarly-situated cases.<sup>7</sup> The State also reviewed sentencing statistics compiled by the Maine Department of Corrections (*See Tab A*) and sentences imposed for similar conduct in other jurisdictions (*See Tabs B & C*). The range of sentences varies somewhat across State Prosecutorial Districts but is primarily governed by the fact-specific circumstances of each case considering duration of conduct, number of images, nature of the specific images themselves, age of the child victims and prior criminal history of the Defendant. Highlights of the varying considerations and representative range of sentences is referenced below:

**1. Prosecutorial District 6 (*Sagadahoc, Knox & Waldo Counties*):** Prosecutorial District 6 maintains an office policy that requires a minimum of 12 months D.O.C. incarceration on any active portion of sentence in any plea agreement involving Possession of Sexually Explicit Materials, Class C, in cases with a low to average number of images of children under age 12 per Natasha Irving, D.A. (*Remarks: Prosecutor suggested she would seek four to five years' incarceration with all but 2 years suspended in a situation where thousands of images are involved*).

**2. Prosecutorial District 5 (*Penobscot & Piscataquis Counties*)** indicated that a 9-month active portion of sentence on a charge of Possession of Sexually Explicit Materials, Class C, is a standard sentence in situations where there is no dissemination alleged and the volume of images is somewhat less than as alleged in the instant case. District 5's minimum sentence starting point on plea agreements in these cases is 6 months incarceration on the active portion of sentence. Underlying sentences range from 2 years to 5 years depending on the factual circumstances.

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<sup>7</sup> It should be noted that the United States Attorney's Office and Homeland Security Investigations also reviewed the materials contained on Defendant's devices.



3. **Special Agent Glenn Lang at the Maine Computer Crime Lab** noted that a sentence of four to five years incarceration with all but 9 months suspended is consistent with similar cases he has seen prosecuted through the Maine State Police Computer Crimes Unit for possession of such materials. S/A Lang's position was that Mr. Cutler should be treated no more harshly nor leniently on account of his public notoriety.

4. **The U.S. Attorney's Office** noted a recent a possession of child pornography case it handled with less images involved but which involved a federal employee using a federal government computer. The Defendant received a 12-month active portion of sentence and a period of supervised release after service of sentence.

5. **The Cumberland County District Attorney's Office** had a case similar to the matter before this Court in that Defendant possessed thousands of images of child pornography, where the State charged over 100 counts of possession, class C, but where actual dissemination of the images occurred. Sentence: 12 years in prison.

6. **Representative cases:** The following representative cases across the State of Maine are given for comparison purposes, but sentences vary widely due to significant factual circumstances such as age of the children victims, age of Defendant, number of images and videos possessed, specific nature of the images and the sexual conduct depicted, evidentiary issues in the case, cooperation of the defendant and characteristics associated with the accused:

*-State v. Brandon Glenn, Prosecutorial District 3, Charge: Possession of Sexually Explicit Materials, Class C, sentence: 2 years' incarceration, all suspended, 2 years of probation (Defendant cooperated, had no record, was on the autism spectrum and only 250 images extracted; see also 2021 ME 7).*

-*State v. Christopher Roy*, Prosecutorial District 3, Charge: Possession of Sexually Explicit Materials, Class C; sentence on conditional plea: 30 months incarceration with all but 8 months suspended, 2 years probation with conditions (*plea to counts 1, 2 & 3 on 8-count complaint with balance dismissed; see also 2019 ME 16*)

-*State v. Llewellyn George*, Prosecutorial District 3, Possession of Sexually Explicit Materials, Class C; sentence 41 months incarceration with all but 90 days suspended, 2 years probation (*Defendant had no SBI record; only 61 images of children under age 12 and 90 images of children whose actual age range that were difficult to determine*).

-*State v. Randall Bazinet*, Prosecutorial District 3, Possession of Sexually Explicit Materials, Class C; sentence on open Guilty plea: 3 years incarceration with all but 90 days suspended (*unknown number of images used for sexual gratification*)

-*State v. Michael Danforth III*, Prosecutorial District 3, Possession of Sexually Explicit Materials, Class C; sentence: 3 years incarceration, all suspended with 4 years probation (*admitted conduct; 776 images; no plea agreement*).

-*State v. Joshua Decker*, Prosecutorial District 3, Possession of Sexually Explicit Materials, Class C; sentence: 4 years with all but 6 months suspended, with 2 years probation (*63 files located; Defendant was sexually abused as child and forced to watch child porn as a child*).

-*State v. Michael Hamm Sr.*, Prosecutorial District 3, Possession of Sexually Explicit Materials, Class C; sentence: 42 months with all but 9 months suspended and 2 years probation with conditions; (*unknown number of images but Defendant used search term "preteen" during searches*).

-*State v. Robert Gardner*, (KNOCD-CR-20-737), Possession of Sexually Explicit Materials, Class C; sentence: Five years incarceration with all but four months suspended and 6

years probation (700 images of children between ages 1 month and 10 years, including images of torture and bondage; no criminal record as Defendant used to serve as a Dispatcher; Defendant's physical health and mental health became issues in the case; after serving 4 months Defendant was released but faced a motion to revoke for non-compliance with probation; Defendant was given a Title 15 mental health exam and found no longer competent).

-State v. Patrick Billington, Piscataquis County, Possession of Sexually Explicit Materials, Class C; sentence: three years with all but 5 months suspended and five years' probation (one image of apparent 5 year-old age range performing oral sex on adult male, with 10 of 76 additional files containing authentic images and videos of children under age 12; the balance were hand drawn and computer animated images; children aged 4 to 14 engaged in acts of self masturbation and sexual acts with adult males and females; defendant admitted a "morbid curiosity" for child pornography).

-State v. Tyler Clark, Penobscot County, Possession of Sexually Explicit Materials, Class C; sentence: 3 years with all but 6 months suspended and 2 years' probation (11 videos of child porn on devices; defendant admitted he watched child porn daily and particularly liked videos of children and animals; videos and images he possessed were taken from otherwise lawful porn sites and re-sent to his email account).

-State v. Gerald White, Cumberland County, CR-15-7400, Possession of Sexually Explicit Materials, Class C; sentence: five years with all but 90 days suspended and 6 years' probation (pled to 1 count; state dismissed 10 counts).

-State v. Lawrence Winger, Cumberland County, CR-14-5760, Possession of Sexually Explicit Materials, Class C; sentence: five years with all but 90 days suspended and four years probation (Defendant was practicing attorney).

-*State v. Christopher Arroyo*, Cumberland County, CR-13-2128, Possession of Sexually Explicit Materials, Class C; sentence: 4 years with all but 4 months suspended and 2 years probation (*defendant pled to a single count*).

-*State v. Joseph Payton*, Cumberland County, CR-14-574, Possession of Sexually Explicit Materials, Class C; sentence: five years incarceration with all but 60 days suspended and two years probation (*pled to a single count and multiple counts dismissed; defendant was an animal control officer in Windham*).

-*State v. James Stoddard*, Cumberland County, CR-14-2298, Possession of Sexually Explicit Materials, Class C; sentence: 5 years incarceration with all but 49 days suspended and 2 years probation (*pled to single count and 2 counts dismissed*).

-*State v. Michael Merrow*, Cumberland County, CR-12-3904, Possession of Sexually Explicit Materials, Class C; sentence: three years incarceration with all but 1 year suspended and two years probation (*32 counts of possession*).

-*State v. Joseph Pinkham*, Lincoln County, Possession of Sexually Explicit Materials, Class C; sentence: five years incarceration with all but two years suspended and two years probation (*200 images of children ages 2 to 12, and 12 videos; Defendant had prior history*).

7. **See Tab A** for a list of Sentences Imposed for Possession of Sexually Explicit Materials of Minor Under Age 12, Class C, compiled by the State of Maine Department of Corrections during the period 1996 through 5-12-2020.


8. **See Tab B** for a comparison of sentences on Possession of Child Sexual Abuse Material in the State of Vermont compiled by Assistant District Attorney Glenn Barnes, Cumberland

County District Attorney's Office, formerly head of the sex crimes unit in the Windham County Prosecutor's office in Vermont.

9. See **Tab C** for the State of New Mexico's Sentencing Memorandum dated 11-12-2022 in a notable Possession of Child Sexual Abuse Material case in the State of New Mexico, *State of New Mexico v. Griego*, CR-2019-02967, provided by Paul Rucha, State of Maine Assistant Attorney General. The Memorandum cites numerous cases and considerations taken into account in child pornography cases.

10. See **Tab D** for the United States Sentencing Commission Federal Sentencing of Child Pornography Non-Production Offenses, June 2021, which details sentencing considerations, and discusses both aggravating and mitigating factors applied to federal possession of child pornography cases.

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